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SUBJECT: KOSOVO STANDARDS DELIVERABLE: PROPERTY RIGHTS

Sensitive But Unclassified; Protect Accordingly

¶1. (SBU) SUMMARY. UNMIK and the Provisional Institutions of Self Government (PISG) have created the Kosovo Property Agency (KPA) as a quasi-judicial forum for resolution of private real estate disputes. The KPA will replace the Housing and Property Directorate (HPD), the independent agency that has adjudicated possession rights to 29,000 residential properties affected by the Kosovo war. The KPA inherits a significant piece of unfinished HPD business -- what to do with the 5,400 HPD-administered residential properties for which tenants are not paying rent to rightful owners. In addition the KPA is charged with the adjudication of rights to an estimated 11,000 agricultural and commercial properties over which HPD had no jurisdiction. Most of these leftover cases involve absentee ethnic Serb owners and ethnic Albanian tenants. The new agency could establish itself as a champion of minority rights, and help the PISG realize one of the Standards for Kosovo, by instituting and enforcing a rental scheme for these thousands of properties. END SUMMARY.

Background

¶2. (SBU) On March 4, the SRSG Soren Jessen-Petersen signed into law UNMIK Regulation 2006-10 establishing the Kosovo Property Agency as a quasi-judicial body ostensibly operating under the authority of Kosovar courts within the Provisional Institutions of Self Government (PISG). The regulation calls for each KPA decision to be sent to the courts whose failure to act within 45 days would be construed as affirmation of the KPA decision. Court action options in any case are to be limited to affirmation of a KPA result or remand to the KPA for further consideration. This unusual appellate structure embodied UNMIK's effort to involve Kosovo's struggling courts without overwhelming them. USOP and other liaison offices argued that creation of an executive agency whose decisions would be appealable to the courts would be a better model, but UNMIK balked at such a substantive transfer of competency to the PISG. Ultimately USOP was convinced that getting on with the resolution of the thousands of outstanding claims,

most of which do not involve serious legal issues, was a higher priority than perfecting the process for rare appeals.

¶13. (SBU) The Housing and Property Directorate (HPD) is often cited as one of UNMIK's most successful creations. Operating out of offices in Pristina and Belgrade, HPD has resolved more than 29,000 housing claims stemming from the Kosovo conflict. Given the wholesale destruction or removal of legal documents during the war, HPD did not undertake to quiet titles but rather adopted a pragmatic approach to sorting out possession rights. Title disputes, in any event, were rare (and subject to jurisdiction of regular courts). Much more typical were cases of displaced persons occupying the homes of other displaced persons, a practical consequence of the destruction of 150,000 homes and the displacement of more than a million people.

¶14. (SBU) HPD dealt with residential properties only. Non-residential claims are subject to jurisdictions of other entities. More than 450 communist-era "socially owned enterprises" (SOE) are passing through Kosovo's privatization auction process under the administration of UNMIK's Kosovo Trust Agency (KTA). Some 1,500 claims against the results of that process, about a third sponsored by the Government of Serbia, are pending before a special chamber of the Kosovo Supreme Court established to hear them. KTA also administers Kosovo's five public utilities (telephone, electricity, railroads, airport, water). Some 17,000 claims for war damages to real property, most against NATO, have been filed in Kosovo courts, nearly all by Kosovo Serbs. Finally, OSCE estimates that possession rights to 3,000 agricultural properties and 8,000 commercial properties have yet to be resolved or even addressed by competent authorities.

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KPA: New Agency Thrown Right Into The Fray

¶15. (SBU) The KTA expects to fully privatize all marketable SOE's by the end of 2006 and is well on the way to incorporating all five public utilities in preparation for eventual privatization. The courts are awaiting UNMIK guidelines on the war damages claims. (NOTE. UNMIK evidently is anticipating a NATO declaration of immunity from suit. END NOTE.) KPA will then be left to deal with more than 16,000 cases comprising the 11,000 agricultural or commercial cases and 5,400 cases of HPD-administrated residential properties where no rent is currently changing hands.

¶16. (SBU) Most of the agricultural and commercial claims involve property owned by displaced Kosovo Serbs and occupied by Kosovo Albanians. Although anecdotal evidence suggests that some of these tenants are paying rent, in funds or in kind, the great majority are not. Similarly, virtually none of the tenants in HPD-administered residential properties are paying rent. HPD's resolution of these cases typically involved the legitimization of the status of squatters who already occupied the properties involved. For their part, the absentee owners (mostly Serbs but a significant number of Albanians) gain at most some degree of assurance that their properties will not be destroyed by disgruntled evictees.

¶17. (SBU) HPD never intended its administration of residential properties occupied by nonpaying tenants to be a permanent arrangement. As KPA takes over these cases from HPD and adds the 11,000 agricultural and commercial claims, the new agency, per Regulation 2006-10, is obliged to institute some variety of rental scheme. This is a potentially massive undertaking for KPA and its staff of 14 internationals and 200 Kosovars, involving the setting and collection of rents in a market still seriously disrupted by the demographic upheavals and real property destruction of the war.

¶18. (SBU) Two important social factors further complicate any

KPA effort to institute a rental scheme. First, Kosovo is ill-equipped to evict illegal tenants on a mass scale. The HPD executed a small number of evictions, all with perimeter police support and all after first making sure that evictees had somewhere else to go. There is no assurance that Kosovo Albanian society would tolerate the wide-scale eviction of tenants who, although clearly in the wrong legally, were in many cases themselves burned out of their homes during the war. Second, agricultural production in Kosovo remains at less than half its pre-war level. Getting land back into full production is a social imperative demanding attention even as the rights of individual land owners are recognized.

¶9. (SBU) COMMENT. The war resulted in nearly one million displaced ethnic Albanians and huge damage to their homes. A plan to compensate Serbs will therefore not be an easy political sell, but the issue of property claims will not go away. The HPD's pragmatic resolution of thousands of property claims amounted to an invaluable service performed, largely by the international community, for the benefit of post war Kosovo. As Kosovo moves towards realization of its final political status, the quick fix provided by the HPD to keep Kosovo's housing stock from even further damage needs to give way to a permanent arrangement. In addition, the lawlessness that has characterized occupancy of a good portion of Kosovo's agricultural and commercial properties must be corrected. These are heavy responsibilities for the new KPA, especially in that the ultimate result of these efforts would be a significant redistribution of real property and money in favor of the Kosovo Serb minority, many of them living in Serbia. The sheer number of such cases means that implementation and enforcement of a rental scheme will be a major undertaking. But fundamental rule-of-law principles and the Standards for Kosovo program (septel) demand that it be done. These are exactly the kind of responsibilities any government must accept and the PISG ostensibly seeks.

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